

## Franchise Tax Board

## NO ANALYSIS REQUIRED

Author: Sher Analyst: Roger Lackey Bill Number: SB 48  
 Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 04-28-99  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Public Record Disclosure/State Agencies Provide In Writing Determination If Records Are Disclosable/Requires Court To Impose \$100 Fine If Agency Refusing Disclosure Isn't Justified

- \_\_\_\_ ANALYSIS NOT REQUIRED of this bill -- Not within scope of responsibility of this department.  
 \_\_\_\_ TECHNICAL BILL -- No program or fiscal changes to existing program.  
 \_\_\_\_ BILL AS AMENDED NO LONGER WITHIN SCOPE of responsibility or program of the department.  
 \_\_\_\_ TECHNICAL AMENDMENT - No change in previously submitted analysis required. Approved position of prior analysis is \_\_\_\_\_.  
 \_\_\_\_ MINOR AMENDMENT - No change in previously submitted analysis required. Approved position of prior analysis is \_\_\_\_\_.  
X MINOR AMENDMENT - No change in approved position of Support. See comments below.  
 \_\_\_\_ OTHER - See comments below.

**COMMENTS:**

This bill would amend the California Public Records Act to require that state agencies justify the withholding of any record by demonstrating in writing that a record is exempt from disclosure or the public interest is served by not making the record public. This bill would establish a procedure to allow any person to appeal to the Attorney General (AG) if a state or local agency denies access to a public record or subverts the intent of the bill by actions short of denial of inspection. In addition, this bill would specify that a person does not have to exhaust this new administrative remedy before filing a proceeding in court to compel disclosure. Finally, this bill would provide that the court shall award a prevailing plaintiff an amount not less than \$100 for each day that the agency denied the right of the plaintiff to inspect the record.

The April 28, 1999, amendment added a statement of legislative intent that an opinion of the AG relating to the provisions added by this bill would constitute an administrative interpretation of the California Public Records Act by an administrative agency charged with its enforcement and should be accorded due deference by the courts.

In addition, the amendment would specify that a request for an opinion from the AG must be withdrawn by written notice.

Except for the discussion above, the department's analysis of SB 48 as amended April 12, 1999, still applies.

## Board Position:

X S                      \_\_\_\_ NA                      \_\_\_\_ NP  
 \_\_\_\_ SA                      \_\_\_\_ O                      \_\_\_\_ NAR  
 \_\_\_\_ N                      \_\_\_\_ OUA                      \_\_\_\_ PENDING

Franchise Tax Board Staff

Date

Roger Lackey

5/14/1999